

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 UNITED STATES OF AMERICA,

Case No. 2:17-cr-00073-APG-EJY

5 Plaintiff,

**ORDER**

6 v.

7 JOSHUA RAY FISHER,

8 Defendant.  
9

10 Pending before the Court is the Motion to Disqualify Defendant Joshua Ray Fisher's  
11 Appellate Counsel. ECF No. 235. No response to this Motion was filed.

12 The Motion succinctly presents the following: (1) Defendant Joshua Ray Fisher's ("J.R.  
13 Fisher") appellate counsel worked for the United States Attorney's Office ("USAO") for the District  
14 of Nevada as an AUSA from 2010 through 2018 handling asset forfeiture matters; (2) J.R. Fisher's  
15 appellate counsel, Michael Humphreys ("Humphreys"), left the USAO in October 2018; (3) prior to  
16 his departure, Humphreys was assigned a criminal case involving asset forfeiture of J.R. Fisher; (4)  
17 in March 2020, J.R. Fisher was sentenced to 300 months of imprisonment; and (5) Humphreys now  
18 seeks to represent J.R. Fisher on an appeal before the U.S. Court of Appeals for the Ninth Circuit. *Id.*  
19 at 1. These facts are undisputed.

20 United States District Court for the District of Nevada Local Rule 7-2(d) states, in pertinent  
21 part, that "[t]he failure of an opposing party to file points and authorities in response to any motion,  
22 except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the  
23 granting of the motion." For this reason alone, the government's Motion may be granted. Moreover,  
24 and in addition to Humphreys' failure to oppose the government's Motion, the Nevada Rules of  
25 Professional Conduct 1.11(a)(2) bars "a lawyer who has formerly served as a public officer or  
26 employee of the government [from] represent[ing] a client in connection with a matter in which the  
27 lawyer participated personally and substantially as a public officer or employee, unless the  
28

1 appropriate government agency gives its informed consent, confirmed in writing, to the  
2 representation.”

3 There is no dispute that the USAO has not and will not consent to Humphreys’ representation  
4 of J.R. Fisher. ECF No. 235 at 7. And, in the absence of a response from Humphreys, there is no  
5 dispute that he personally and substantially participated as a public officer or employee in the J.R.  
6 Fisher criminal matter while at the USAO in Nevada.

7 Accordingly, and based on the foregoing, IT IS HEREBY ORDERED that the Motion to  
8 Disqualify Defendant Joshua Ray Fisher’s Appellate Counsel (ECF No. 235) is GRANTED.

9  
10 Dated this 13th day of July, 2021.

11  
12  
13   
14 ELAYNA J. YOUCHAH  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28